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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Marjorie B. Medina

Serial No.: 09/832,211

Examiner: B. Carrillo

Filed: 10 April 2001

Group Art Unit: 1746

For: Method of detaching microorganisms from, or of inhibiting microbial attachment to, animal or poultry carcasses or seafood or parts thereof

BRIEF OF APPELLANTS PURSUANT TO 37 C.F.R. SECTION 1.192

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Further to the Notice of Appeal filed on 29 May 2003, Appellants hereby appeal from the Final Rejection of the Examiner dated 23 May 2003 to the Board of Patent Appeals and Interferences.

I. REAL PARTY IN INTEREST

The Real Party In Interest is the United States of America as represented by the Secretary of Agriculture.

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II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 13-24 are pending and are being appealed.

IV. STATUS OF AMENDMENTS

No Amendment is outstanding.

V. SUMMARY OF INVENTION

The present invention, as embodied in claim 13, concerns a method of detaching microorganisms from, or of inhibiting microbial attachment to, animal or poultry carcasses or seafood or parts thereof, said method consisting of contacting animal or poultry carcasses or seafood or parts thereof at least once with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from, or inhibit microbial attachment to, said animal or poultry carcasses or seafood or parts thereof (specification, page 58, lines 2-9).

VI. ISSUES

Whether the method as claimed is indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

VII. GROUPING OF CLAIMS

Claims 14, 16, 17, 19, 22 and 23 are dependent on independent claim 13. Claim 15 is dependent on dependent claim 14. Claim 18 is dependent on dependent claim 17. Claims 20-21 are dependent on dependent claim 19. Claim 24 is dependent on dependent claim 22.

VIII. ARGUMENTS

1. The Examiner has not established a *prima facie* basis to deny patentability to the claimed invention.

1. The Examiner has not established a *prima facie* basis to deny patentability to the claimed invention.

It is well settled that the initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention on any ground is always upon the Examiner. *Ex part Parks*, 30 USPQ2d 1234, 1236 (BPAI 1994); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). A decision as to whether a claim is invalid under 35 U.S.C. Section 112, second paragraph requires a determination whether those skilled in the art would understand what is claimed. *Amgen Inc. v. Chugai Pharmaceutical Co.*, 18 USPQ2d 1016, 1030 (Fed. Cir. 1991).

The Examiner has alleged the following (Page 2, Office Action dated 6 January 2003):
“...Claims 13, and 16-24 are indefinite because it includes the trademark “TWEEN”. The trademark cannot be used because the composition covered by this trademark is solely within the

control of the trademark owner and maybe [sic, "may be"] subject to change over time as the sole discretion of the owner...."

Applicant in the Amendment dated 18 March 2003 noted the following (page 5): "...The Examiner alleges that the trademark "Tween" cannot be used in the claims. However, a search of post-1976 patents on the U.S. Patent and Trademark Office website shows that 247 patents contain the term "Tween" in their claims (see attached paper and copy of U.S. Patent 6,651,112 (note column 2, line 54 and claim 15))...."

The Examiner made the same rejection in the Office Action dated 23 May 2003. In fact, the Examiner used the identical language of the rejection which first appeared in the first Office Action dated 6 January 2003, including the incorrect use of "maybe". However, the Examiner failed to reply to Applicant's argument as quoted above. Therefore Applicant again pointed out the following: "...The Examiner alleges that the trademark "Tween" cannot be used in the claims. However, a mere cursory search of post-1976 patents on the U.S. Patent and Trademark Office website shows [that 248] patents containing the term "Tween" in their claims (e.g., see attached paper and copy of U.S. Patent 6,562,366 (claim 8) and U.S. Patent 6,495,155 (claim 7))...." The Examiner has yet to respond to this argument. A courtesy copy of U.S. Patents 6,562,366 and 6,495,155 and of the first page of the search (21 July 2003) is attached.

The Examiner has repeatedly failed to present a *prima facie* basis to deny patentability to the claimed invention since the Examiner has failed to show that those skilled in the art would not understand what is claimed. The undisputed fact remains that 248 post-1976 patents contain the term "Tween" in their claims and one skilled in the art would readily understand the term. The Examiner remains utterly silent on this point.

Reversal of the Final Rejection of the Examiner by the Board of Patent Appeals and
Interferences is therefore respectfully requested.

Please charge any required fees pertaining to this Appeal Brief to the Deposit Account of
the undersigned, No. 50-2134, and credit any overpayment to said Account.

Respectfully submitted,

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APPENDIX

Claims:

13. A method of detaching microorganisms from, or of inhibiting microbial attachment to, animal or poultry carcasses or seafood or parts thereof, said method consisting of contacting animal or poultry carcasses or seafood or parts thereof at least once with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from, or inhibit microbial attachment to, said animal or poultry carcasses or seafood or parts thereof.
14. The method according to claim 13, wherein said polysulfated polysaccharide is selected from the group consisting of heparan sulfate, dextran sulfate, lambda carrageenan, kappa carrageenan, iota carrageenan, and mixtures thereof.
15. The method according to claim 14, wherein said polysulfated polysaccharide is kappa carrageenan.
16. The method according to claim 13, said method consisting of contacting animal or poultry carcasses or seafood or parts thereof at least twice with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from, or inhibit microbial attachment to, said animal or poultry carcasses or seafood or parts thereof.
17. The method according to claim 13, said method consisting of contacting animal or poultry carcasses or parts thereof at least once with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from, or inhibit microbial attachment to, said animal or poultry carcasses or parts thereof.
18. The method according to claim 17, said method consisting of contacting animal or poultry carcasses or parts thereof at least twice with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from, or inhibit microbial attachment to, said animal or poultry carcasses or parts thereof.
19. The method according to claim 13, said method consisting of contacting animal or poultry carcasses or seafood or parts thereof at least once with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or

arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from said animal or poultry carcasses or seafood or parts thereof.

20. The method according to claim 19, said method consisting of contacting animal or poultry carcasses or seafood or parts thereof at least twice with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from said animal or poultry carcasses or seafood or parts thereof.

21. The method according to claim 19, said method consisting of contacting animal or poultry carcasses or parts thereof at least once with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to detach microorganisms from said animal or poultry carcasses or parts thereof.

22. The method according to claim 13, said method consisting of contacting animal or poultry carcasses or seafood or parts thereof at least once with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to inhibit microbial attachment to said animal or poultry carcasses or seafood or parts thereof.

23. The method according to claim 13, said method comprising contacting animal or poultry carcasses or seafood or parts thereof at least twice with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to inhibit microbial attachment to said animal or poultry carcasses or seafood or parts thereof.

24. The method according to claim 22, said method consisting of contacting animal or poultry carcasses or parts thereof at least once with at least one member of the group consisting of (i) a polysulfated polysaccharide, (ii) carboxymethyl cellulose, (iii) guanidine or arginine, optionally together with Tween and sodium chloride, (iv) and mixtures thereof, in an amount effective to inhibit microbial attachment to said animal or poultry carcasses or parts thereof.

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ACLM/tween

PAT. NO. Title

- 1 [6,562,366](#) **T** Method to prevent the formation and enhance the breakdown of bezoars in animals and humans
- 2 [6,531,112](#) **T** Formulations for administering calcitonin and processes for preparing the same
- 3 [6,521,256](#) **T** Stabilized pharmaceutical composition
- 4 [6,518,033](#) **T** Method of detecting the presence of CD155 for diagnosis of cancer and to determine treatment
- 5 [6,509,322](#) **T** Pharmaceutical compositions for topical use containing hyaluronic acid and its derivatives
- 6 [6,503,532](#) **T** Pharmaceutical composition containing tetrahydrocannabinol and a transdermal/transcutaneous delivery method thereof
- 7 [6,498,016](#) **T** Rapid method for enzyme-linked immunosorbent assay
- 8 [6,495,155](#) **T** Injectable opioid partial agonist or opioid antagonist microparticle compositions and their use in reducing consumption of abused substances
- 9 [6,492,146](#) **T** Process for the preparation of phosphatidylserines
- 10 [6,491,803](#) **T** Test strip and biosensor incorporating with nanometer metal particles
- 11 [6,489,312](#) **T** Pharmaceutical formulations comprising aminoalkyl phosphorothioates
- 12 [6,482,850](#) **T** Hydrolysis-promoting hydrophobic taxane derivatives
- 13 [6,469,159](#) **T** Methods for extracting nucleic acids from tissue samples and paraffin-embedded tissues
- 14 [6,462,180](#) **T** Method of preparing .alpha.-1 proteinase inhibitor
- 15 [6,461,600](#) **T** Topical pain relief composition and carrier
- 16 [6,451,848](#) **T** Compositions and methods comprising morphine gluconate